

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OLEG BRYZZHEV,

Plaintiff,

v.

UNITED STATES CUSTOMS AND  
BORDER PROTECTION,

Defendant.

CASE NO. 2:24-cv-1040-JNW

DISMISSAL ORDER

Plaintiff Oleg Bryzzhev, proceeding pro se, challenges Defendant Customs and Border Protection's (CBP) denial of his application for membership in the NEXUS trusted traveler program. CBP moved to dismiss, arguing that Bryzzhev failed to effect proper service, did not identify any waiver of sovereign immunity that would allow his claims to proceed, and failed to state a claim under which relief could be granted. Dkt. No. 18. The Court ordered Bryzzhev to either respond or amend his complaint to address the deficiencies raised by CBP. Dkt. No. 20. Bryzzhev responded on April 9, 2025, Dkt. No. 21, but his response does not fix these issues. Accordingly, the Court GRANTS CBP's motion to dismiss.

1 **1.1 Bryzzhev has not affected proper service.**

2 In its prior order, the Court noted that Bryzzhev failed to serve the U.S.  
3 Attorney's Office for the Western District of Washington, as required by Federal  
4 Rule of Civil Procedure 4(i)(1). Dkt. No. 20 at 3 (citing *Carr v. Naval Base Kitsap*  
5 *Bremerton*, No. 18-cv-06005, 2021 WL 322518, at \*2 (W.D. Wash. Feb. 1, 2021)  
6 (dismissing complaint for insufficient service of process because plaintiff failed to  
7 serve the United States Attorney General); *see also Friends of Roeding Park v. City*  
8 *of Fresno*, No. 11-cv-02070, 2012 WL 13191408, at \*1–2 (E.D. Cal. Feb 1, 2012)  
9 (dismissing for failure to serve federal defendants consistent with Rule 4(i)).

10 In his response, Bryzzhev states that he served the U.S. Attorney's Office for  
11 the Western District of Washington via "registered fax" on September 22, 2024. Dkt.  
12 No. 21 at 2. He argues that "[r]easonable deviations from the dogma of Rule 4 are  
13 necessary and possible in the interests of justice." *Id.* Bryzzhev then cites Rules  
14 4(f)(3) and 5(b)(2)(E), neither of which are relevant here. Rule 4(f)(3) involves  
15 serving an individual in a foreign country. Although Bryzzhev resides in Canada, he  
16 is serving the United States not an individual in a foreign country. Rule 5(b)(2)(E)  
17 pertains to serving papers and filings—not service of process. The Court cannot  
18 excuse Bryzzhev from Rule 4(i)(1) simply because he finds it "dogmatic." Indeed,  
19 "[p]ro se litigants must follow the same rules of procedure that govern other  
20 litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), *overruled on other*  
21 *grounds by Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

**1.2 Bryzzhev fails to state a claim on which relief can be granted.**

As the Court explained in its prior order, the United States is immune from suit unless it unequivocally expresses a waiver of its immunity. *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Irwin v. Dep’t of Veterans Affs.*, 498 U.S. 89, 95 (1990). But Bryzzhev identifies no specific statutory waiver of sovereign immunity here. Dkt. No. 20 at 4.

In his response, Bryzzhev cites three statutes but fails to state a claim under any of them. The basic facts of Bryzzhev’s complaint are straightforward—CBP denied Bryzzhev’s NEXUS application finding he did not meet program eligibility requirements after presenting a “World Passport” issued by the “World Service Authority.” Dkt. No. 6 at 7–10.

First, Bryzzhev cites the Federal Tort Claims Act (FTCA), under which a plaintiff can sue the United States for injuries caused by negligent acts of government employees. 28 U.S.C. § 2674; *see also Lam v. United States*, 979 F.3d 665, 672 (9th Cir. 2020). In his response, Bryzzhev states that CBP acted “negligently and wrongfully” in finding that his World Passport was fraudulent. Dkt. No. 21 at 10–11. But Bryzzhev concedes that if CBP “is going to challenge the World Service Authority’s right to issue World Passports and the World Passport’s right of identification, then this issue goes far beyond [his] competence.” Dkt. No. 21 at 6. Moreover, Bryzzhev does not allege that CBP accepts World Passports as valid identification, therefore, he fails to show that CBP breached a duty in denying his application. *See* Dkt. No. 6 at 9 (stating that “189 countries have reportedly

1 accepted World Passports on a . . . case-by-case basis,” but not stating that the  
2 United States is one of those countries).

3 Even if the Court were to accept Bryzzhev’s conclusory statement that  
4 rejecting his World Passport was negligent, it would be blocked by the discretionary  
5 function exception. Specifically, “[t]he government does not waive immunity for tort  
6 claims if the alleged tortfeasor was performing a discretionary function or duty  
7 when he or she injured the plaintiff.” *Lam*, 979 F.3d at 672; 28 U.S.C. § 2680(a). The  
8 exception applies where the employee is afforded discretion in their decision-making  
9 and “[w]here there is room for policy judgment and decision there is discretion.”  
10 *Lam*, 979 F.3d at 673 (quoting *Dalehite v. United States*, 346 U.S. 15, 36 (1953)).  
11 Bryzzhev shows neither that CBP officers must, or had discretion to, accept World  
12 Passports, but even if it was a discretionary decision, immunity would apply. Either  
13 way, Bryzzhev’s claim cannot proceed under the FTCA.

14 Second, Bryzzhev cites the Little Tucker Act. Under the Little Tucker Act,

15 The district courts shall have original jurisdiction, concurrent with the  
16 United States Court of Federal Claims, of: . . . (2) Any other civil action  
17 or claim against the United States, not exceeding \$10,000 in amount,  
18 founded either upon the Constitution, or any Act of Congress, or any  
regulation of an executive department, or upon any express or implied  
contract with the United States, or for liquidated or unliquidated  
damages in cases not sounding in tort . . . .

19 28 U.S.C. § 1346(a)(2). But Bryzzhev does not identify a foundation for his request  
20 for damages—in the Constitution, federal statute, administrative regulation, or  
21 contract. As the Court explained in its prior order, none of the Constitutional or  
22 international sources of law Bryzzhev cites create judicially enforceable rights that  
23

1 would override CBP's discretionary authority. Dkt. No. 20 at 5–6. As a result,  
2 Bryzzhev fails to state a claim under the Little Tucker Act.

3 Finally, Bryzzhev cites the Administrative Procedure Act, 5 U.S.C.  
4 § 706(2)(A), which allows judicial review of final agency action that is “arbitrary,  
5 capricious, [or] an abuse of discretion.” But, as the Court has already explained,  
6 CBP denied Bryzzhev's application because he presented a document that it does  
7 not recognize as a valid travel document and because he was deemed inadmissible  
8 to the United States. Dkt. No. 20 at 5. Accordingly, the decision was neither  
9 arbitrary nor capricious but rather within CBP discretion to administer the NEXUS  
10 program. *Id.*

11 In sum, the Court finds that Bryzzhev failed to effect proper service and  
12 further failed to state a claim on which relief may be granted. Because the Court  
13 has already granted Bryzzhev leave to amend or to respond to these deficiencies,  
14 the Court finds further leave to amend would be futile. Thus, the Court GRANTS  
15 CBP's motion to dismiss, Dkt. No. 18, and DISMISSES Bryzzhev's complaint with  
16 prejudice. The Court directs the Clerk to close this case.

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18 Dated this 18th day of April, 2025.

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21 Jamal N. Whitehead  
22 United States District Judge  
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